

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

VICTOR RUIZ,

Plaintiff

v.

ELKO POLICE DEPARTMENT,

Defendant

Case No.: 3:23-cv-00366-RCJ-CSD

**Order**

Plaintiff, who is an inmate in custody of the Elko County Jail, filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro se complaint (ECF No. 1-1). On August 7, 2023, the court denied Plaintiff's IFP application without prejudice as incomplete, and the court gave him 30 days to file a completed IFP application. (ECF No. 3.)

On September 11, 2023, Plaintiff filed a new IFP application. (ECF No. 4.) On October 10, 2023, he filed a third IFP application. (ECF No. 5.)

A person may be granted permission to proceed IFP if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

1 “[T]he supporting affidavits [must] state the facts as to [the] affiant’s poverty with some  
2 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)  
3 (quotation marks and citation omitted). A litigant need not “be absolutely destitute to enjoy the  
4 benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

5 An inmate submitting an application to proceed IFP must also “submit a certificate from  
6 the institution certifying the amount of funds currently held in the applicant’s trust account at the  
7 institution and the net deposits in the applicant’s account for the six months prior to the date of  
8 submission of the application.” LSR 1-2; *see also* 28 U.S.C. § 1915(a)(2). If the inmate has been  
9 at the institution for less than six months, “the certificate must show the account’s activity for  
10 this shortened period.” LSR 1-2.

11 If a prisoner brings a civil action IFP, the prisoner is still required to pay the full amount  
12 of the filing fee. 28 U.S.C. § 1915(b)(1). The court will assess and collect (when funds exist) an  
13 initial partial filing fee that is calculated as 20 percent of the greater of the average monthly  
14 deposits or the average monthly balance for the six-month period immediately preceding the  
15 filing of the complaint. 28 U.S.C. § 1915(b)(1)(A)-(B). After the initial partial filing fee is paid,  
16 the prisoner is required to make monthly payments equal to 20 percent of the preceding month’s  
17 income credited to the prisoner’s account. 28 U.S.C. § 1915(b)(2). The agency that has custody  
18 of the prisoner will forward payments from the prisoner’s account to the court clerk each time  
19 the account exceeds \$10 until the filing fees are paid. 28 U.S.C. § 1915(b)(2).

20 The court will first address the IFP application filed on September 11, 2023. (ECF No. 4.)

21 Plaintiff’s certified account statement indicates that his average monthly balance for the  
22 last six months was \$0 and his average monthly deposits were \$0. The signature on the financial  
23 signature is not legible. Moreover, it is followed by a page that has a handwritten ledger that lists

1 dates ranging from January 2, 2023 through August 15, 2013, which Ruiz purports to be his six-  
 2 month transaction history. The court finds that the failure to include a certificate with a legible  
 3 signature from a person with authority from the Elko County Jail as well as an official record of  
 4 his transactions from the last six months justifies denial of his second IFP application (ECF No.  
 5 4).

6 Plaintiff's third IFP application (ECF No. 5) is also inadequate. It does not contain a  
 7 legible signature on the financial certificate and the six-month transaction history is completely  
 8 missing. Therefore, the third IFP application (ECF No. 4) is also denied.

### 9 CONCLUSION

10 (1) Plaintiff's IFP applications (ECF Nos. 4 and 5) are **DENIED**.

11 (2) The Clerk shall **SEND** Plaintiff a copy of the instructions and application to proceed  
 12 IFP for an inmate. Plaintiff has **30 days** from the date of this Order to either file his completed  
 13 IFP application or pay the full \$402 filing fee. The application must be accompanied by all of the  
 14 required documents, including:

15 (a) the completed **application to proceed IFP for an inmate** on the court's  
 16 approved form (i.e., pages 1-3 with the inmate's two signatures on page 3);

17 (b) a **financial certificate** properly signed by both the inmate and a prison or jail  
 18 official (i.e., page 4 of the court's approved form); and

19 (c) a copy of the inmate's prison or jail **trust fund account statement for the**  
 20 **previous six month period**.

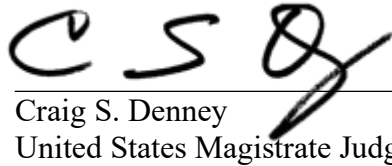
21 Once Plaintiff has filed his completed IFP application and financial certificate or paid the  
 22 filing fee, the court will screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) or 28 U.S.C.  
 23 § 1915A, or both. Both require dismissal of a complaint, or any portion thereof, that is frivolous

1 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
2 against a defendant who is immune from such relief. If the complaint is dismissed on screening,  
3 there will be no refund of the filing fee, and an inmate proceeding IFP is still required to pay the  
4 \$350 filing fee over time.

5 If Plaintiff fails to timely file a completed IFP application and financial certificate or pay  
6 the filing fee, the court will recommend dismissal of this action without prejudice.

7 **IT IS SO ORDERED.**

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9 Dated: December 1, 2023

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Craig S. Denney  
United States Magistrate Judge